

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

Crl.Rev.Pet.No. 965 of 1997()

CRA.62/1992 of I ADDL. SESSIONS COURT, PALAKKAD
CC.36/1990 of JUDL.MAGISTRATE OF FIRST CLASS COURT, OTTAPPALAM
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REVN. PETITIONER:

P.VASU, S/O.PAZHANI,
VEMBADI HOUSE, KOPPAM,
PALAKKAD.

BY ADV. M/S. M.N.S. NAYAR & CO

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 02/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER ON CRL.M.P.NO.3966/1997 IN CRL.R.P.NO.965/1997

CLOSED

SD/- K.R.UDAYABHANU, JUDGE

02/07/2007

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K.R.UDAYABHANU, J.

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Crl.R.P.No.965/1997
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Dated this the 2nd day of July, 2007

O R D E R

The revision petitioner, the first accused in C.C.No.36/1990, stands convicted for the offence under Sections 457 and 380 I.P.C read with Section 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year under Section 457 I.P.C and rigorous imprisonment for one year under Section 380 I.P.C and it was also directed that the sentences shall run concurrently.

2. The prosecution case is that accused 1 to 3 on 04/08/1989, at about 12 'o'clock in the middle of night, in furtherance of common intention broke open the lock of Uthrathilkavu Bhagavathy temple situated in Vellinezhi Panchayat, entered the temple and committed theft of a silver crown, which was placed on the idol of Bhagavathy.

3. The evidence adduced in the matter consisted of testimony of PWs.1 to 8 and Exts.P1 to P4 and M.O.I to III. The defence examined DW.1 and marked Exts.D1, D1(a) and D1(b). The second accused was acquitted and the third accused is absconding.

4. The sole evidence that connect the accused with the offence is the recovery of silver ingot from the shop of PW.5. Although, PW.5 turned hostile, PWs.7 and 8, the police officials and, PW.6 an independent witness have testified as to the above recovery. According to PW.5, who was treated as hostile, the recovery was affected in the presence of the second accused and not in the presence of the first accused. The contention of the revision petitioner is that Section 27 of the Indian Evidence Act will not be attracted for more than one reason and the findings in this regard by the courts below are erroneous. I find that the above contention of the counsel for the revision petitioner has to be upheld as the recovery is of the ingot and not of the silver crown of the stolen property. All the same, on a consideration of the evidence adduced in the matter, I find that the offence

stands established as it has been proved that the recovery was effected as led by the first accused and the recovery was effected by PW.8, the Sub Inspector, in the presence of CW.7, the Circle Inspector of Police, Palakkad, who arrested the accused, which is vouchsafed by PW.6, the independent witness. The conduct of the accused, as proved by PWs.7, 8 and 6, is admissible under Section 8 of the Evidence Act.

5. The contention of the revision petitioner is that, based on the evidence of DW.1 and the G.D entries, Exts.D1(a) and D1(b) there is no possibility of PW.8 effecting the recovery on 30/09/1989, as according to DW.1, the Head Constable, the Sub Inspector had left the police station on 29/09/1989 in the morning and reached back only on 30/09/1989 at 7 p.m. But I find that the court below, that is, the trial court has specifically recorded that the court has examined the G.D and it is seen that PW.8 has written in his own handwriting that at 8.10 a.m, he himself and the Head Constable 1061 are going to Palakkad for giving evidence in Judicial Magistrate of the First Class Court-II Palakkad, and to investigate Crime No.82/89, that is the instant

crime. Further, the case that on 29th and 30th of September, PW.8 was not in the Sreekrishnapuram Police Station has not been put to PW.8. In the circumstances, I find no reason to disbelieve the version. I find that the fact that the court itself has verified Ext.D1 G.D and satisfied as to the presence of PW.8 in the Police Station in the morning of 30/09/1989, cannot be discarded.

The counsel also pointed out that it is mentioned in the judgment of the trial court that it is brought out in evidence that he (PW.8) stayed at Palakkad and gave evidence before Judicial Magistrate of the First Class Court -II, Palakkad, on 29/09/1989. I find it is not supported by any evidence in the matter. The deposition of PW.8 did not contain any statement to the above effect. The evidence of DW.1 was found incorrect by the court itself on the verification of the G.D.. In the circumstances, I find no reason to deviate from the concurrent findings of the courts below, although for different reasons. I find that the accused is guilty of the offences alleged. Considering the nature of the

offence, I find no reason to interfere with the conviction and sentence imposed. Revision petition is dismissed.

**K.R.UDAYABHANU,
Judge**

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K.R.UDAYABHANU, J.

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O R D E R

2nd July, 2007